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Attorneys for Defendants Don Evans,
Secretary of Commerce, U.S. Department
Of Commerce, and William T. Hogarth,
Assistant Administrator for Fisheries,
National Marine Fisheries Service

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY,
a non-profit corporation, DOUGLAS L.
BEVINGTON, an individual, DIANE
LADOUCEUR, an individual, and KIERAN
MULVANEY, an individual,

Plaintiffs,

v.

DON EVANS, Secretary of Commerce, U.S.
Department of Commerce, and WILLIAM T.
HOGARTH, Assistant Administrator for
Fisheries, National Marine Fisheries Service,
Defendants.

Case No.: C-04-4496-WHA

**PLAINTIFFS' AND FEDERAL
DEFENDANTS' STIPULATION AND
SETTLEMENT REGARDING FEES
AND COSTS, AND ~~PROPOSED~~ ORDER**

Whereas plaintiffs have moved for an award of fees and costs against the federal defendants under the Endangered Species Act, 16 U.S.C. § 1540(g)(4) ("ESA"), for the time and costs they have expended on this litigation;

Whereas the Court, on September 14, 2005, entered an Order Finding Plaintiffs' Entitled to Attorneys' Fees under the ESA;

Whereas plaintiffs and federal defendants desire to resolve plaintiffs' claim for fees and costs without the need for an expenditure of significant additional time or resources on that issue by the parties or the Court;

Whereas plaintiffs and federal defendants agree that it is in the public interest to avoid a protracted dispute over the fee and cost issue;

Whereas plaintiffs and federal defendants have now reached a settlement of the fee and cost claim that does not entail any concession of law or fact by either plaintiffs or federal defendants;

It is therefore stipulated and agreed to, by and between plaintiffs and federal defendants that:

1. Federal defendants will pay plaintiffs, pursuant to section 11(g) of the ESA, \$97,000.00 in full settlement of plaintiffs' claim for attorneys' fees and costs through the date of the filing of this Stipulation. Defendants will issue a check in that amount to:

Meyer Glitzenstein & Crystal
Suite 700
1601 Connecticut Ave., N.W.
Washington, D.C. 20009.

2 Defendants agree to submit all necessary paperwork to funding authorities at the Department of the Treasury within ten (10) business days of receipt of the signed court order approving this stipulation.

3. It is further stipulated that this Stipulation and agreement applies only to attorneys' time and litigation costs expended prior to the date of the filing of this Stipulation. It does not waive plaintiffs' right to seek fees or costs for time expended in this or any other litigation following the date of the filing of this Stipulation. Defendants reserve the right to contest any future attempt to seek fees or costs by plaintiffs.

4. Paragraphs 2-15 of the Court's September 14, 2005 Order should be vacated as moot since this Stipulation renders the process set forth in those paragraph unnecessary.

5. This stipulation as to attorneys' fees and costs has no precedential value and its contents shall not be used as evidence in any other attorneys' fees litigation. By this agreement, defendants do not waive any right to contest fees claimed by plaintiffs or plaintiffs' counsel, including the hourly rate, in any future litigation.

6. In an e-mail dated Thursday, September 27, 2005, Counsel for the defendants, Mr. Jimmy A. Rodriguez, authorized plaintiffs' counsel to sign this joint stipulation and enter it in the ECF system.

Respectfully submitted on September 27, 2005,

/s/

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Secretary of Commerce, U.S. Department
Of Commerce, and William T. Hogarth,
Assistant Administrator for Fisheries,
National Marine Fisheries Service

1 SO ORDERED:

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4 U.S. District Judge

5 Dated: Sept. 28, 2005
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